



April 18, 2018

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## Policy Alert

SUBJECT: Acquisition of U.S. Citizenship for Children Born Out of Wedlock

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to clarify certain requirements for acquisition of U.S. citizenship for children born outside the United States and out of wedlock under sections 301 and 309 of the Immigration and Nationality Act (INA). USCIS is making conforming edits to the USCIS nationality charts. This update addresses:

- Changes to physical presence requirements in acquisition of citizenship cases per the U.S. Supreme Court decision in *Sessions v. Morales-Santana*.<sup>1</sup>
- Clarifications on what may qualify as a father's written agreement of financial support for purposes of certain acquisition of citizenship cases.<sup>2</sup>

### Background

U.S. immigration laws allow certain children born outside the United States to acquire U.S. citizenship at birth through their U.S. citizen parent(s).<sup>3</sup> In general, these provisions require at least one of the child's parents to be a U.S. citizen at the time of the child's birth and for the parent to have been physically present in the United States for a certain period of time.<sup>4</sup> On June 12, 2017, the U.S. Supreme Court, in *Sessions v. Morales-Santana*, held that the different physical presence requirements for an unwed U.S. citizen father and an unwed U.S. citizen mother violated the U.S. Constitution's equal protection guarantee.<sup>5</sup>

In addition, some acquisition of citizenship cases require the U.S. citizen father of a child born out of wedlock outside the United States to provide a written agreement of financial support for the child.<sup>6</sup> Certain requirements must be met in order for a document to qualify as a written agreement.

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<sup>1</sup> See *Sessions v. Morales-Santana*, 137 S.Ct.1678 (2017).

<sup>2</sup> Clarifications on the written agreement requirement are unrelated to *Sessions v. Morales-Santana*. See [INA 309\(a\)\(3\)](#).

<sup>3</sup> See [INA 301](#) and [INA 309](#).

<sup>4</sup> This includes children born outside the United States and out of wedlock. See [INA 301](#) and [INA 309](#).

<sup>5</sup> See *Sessions v. Morales-Santana*, 137 S.Ct.1678 (2017). See [U.S. Constitution, amend. XIV](#).

<sup>6</sup> See [INA 309\(a\)\(3\)](#).

This update to Volume 12 of the Policy Manual incorporates and clarifies these requirements and makes corresponding amendments to the pertinent USCIS nationality charts. The guidance contained in the Policy Manual is controlling and supersedes any prior guidance.

### Policy Highlights

- Explains that *Sessions v. Morales-Santana* applies the physical presence requirement (at least 5 years, of which at least 2 years must be after age 14) in INA 301(g) to all cases involving a child born out of wedlock to one U.S. citizen parent and one foreign national parent outside of the United States on or after June 12, 2017, regardless of whether the child seeks to derive citizenship from a U.S. citizen mother or U.S. citizen father.
- Explains that the U.S. Supreme Court decision in *Sessions v. Morales-Santana* increases the physical presence requirement (from 1 continuous year to at least 5 years, of which at least 2 years must be after age 14) in INA 309(c) in cases involving a child born out of wedlock outside of the United States to a U.S. citizen mother and a foreign national father on or after June 12, 2017. The physical presence requirement of 1 continuous year in INA 309(c) remains in effect in such cases where the child was born prior to that date.
- Provides additional guidance in the USCIS nationality charts for cases involving two U.S. citizen parents whose child was born abroad out of wedlock, where the father does not satisfy the requirements of INA 309(a).
- Clarifies that the statutory phrase “has agreed in writing to provide financial support” under INA 309 includes documentary evidence existing before the child’s 18th birthday that shows the child’s father accepted the legal obligation to support the child.<sup>7</sup>
- Explains that a separate agreement or contract is not required for the father to satisfy the requirement under INA 309(a)(3) in cases where there is documentary evidence showing the child’s father accepted the legal obligation to support the child (before age 18) or the obligation to provide such support was imposed on the father by a court of competent jurisdiction or an administrative governmental agency empowered to adjudicate such issues.
- Incorporates technical and editorial changes in the USCIS nationality charts including, for example, legal citations, adding the applicable definition of child, and revising the residence requirements in accordance with *Sessions v. Morales-Santana*.

### Citation

Volume 12, Citizenship & Naturalization, Part H, Children of U.S. Citizens, Chapter 3, U.S. Citizens at Birth (INA 301 and 309) [[12 USCIS-PM H.3](#)].

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<sup>7</sup> See [INA 309\(a\)\(3\)](#).